

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION**

IN RE: **BARBARA SUE ARMOUR MORGAN** **CASE NO. 1:18-BK-13970-SDR**
A/K/A BARBARA SUE MORGAN
F/K/A BARBARA SUE ARMOUR,
Debtor **CHAPTER 7**

**WELLS FARGO BANK, NATIONAL
ASSOCIATION, SUCCESSOR BY MERGER TO
WELLS FARGO BANK MINNESOTA, NATIONAL
ASSOCIATION (FORMERLY KNOWN AS
NORWEST BANK MINNESOTA, NATIONAL
ASSOCIATION), NOT IN ITS INDIVIDUAL OR
BANKING CAPACITY, BUT SOLELY IN ITS
CAPACITY AS TRUSTEE FOR THE MERRILL
LYNCH MORTGAGE INVESTORS TRUST,
SERIES 2004 HE2**

CHAPTER 7

VS.

**BARBARA SUE ARMOUR MORGAN
A/K/A BARBARA SUE MORGAN
F/K/A BARBARA SUE ARMOUR, DEBTOR;
and ELISABETH B. DONNOVIN, TRUSTEE**

RESPONDENTS

NOTICE OF OPPORTUNITY TO OBJECT AND FOR HEARING

Notice is hereby given that:

Pursuant to Local Rule 9013-1(h), the court may consider this matter without further notice or hearing unless a party in interest files an objection. If you object to the relief requested in this paper, you must file with the clerk of the court at 31 East 11th Street, Chattanooga, TN 37402, an objection within 14 days from the date this paper was filed and serve a copy on the movant's attorney, Wilson & Associates, P.L.L.C., 320 N. Cedar Bluff Road, Suite 240, Knoxville, TN 37923. If you file and serve an objection within the time permitted, the court will schedule a hearing and you will be notified. If you do not file an objection within the time permitted, the court will consider that you do not oppose the granting of the relief requested in this paper and may grant the relief requested without further notice or hearing.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

MOTION FOR RELIEF FROM AUTOMATIC STAY AND ABANDONMENT

Comes now Wells Fargo Bank, National Association, Successor by Merger to Wells Fargo Bank Minnesota, National Association (Formerly Known as Norwest Bank Minnesota, National Association), not in its Individual or banking capacity, but solely in its capacity as trustee for the Merrill Lynch Mortgage Investors Trust, Series 2004-HE2, and through its attorneys, Wilson & Associates, P.L.L.C., and for its Post-Sale Motion for Relief from the Automatic Stay, states:

1. It was the servicer of the deed of trust and note originally executed by Barbara S. Morgan on July 1, 2004, securing payment in the principal sum of \$50,050.00 to First NLC Financial Services, LLC. Said deed of trust covered the real property located at 606 South Saint Marks Avenue, Chattanooga, Tennessee 37412, said real property being more particularly described as follows:

Being part of Lot No. Seven (7), of the Lethia Douglas Subdivision of the 16.1 acre tract in the East half of the Northeast Quarter of the Northwest Quarter of Section 32, Township 6, Range 3, Ocoee District, beginning at the intersection of East St. Marks Street and a private driveway, being the Northeast corner at intersection, and extending 125 feet Northwardly along said S. St. Marks Street to a stake; thence Eastwardly 100 feet to a stake; thence Southwardly and parallel with said S. St. Marks Street a distance of 125 feet to along said Private Driveway; thence Westwardly a distance of 100 feet along said Private Driveway to the point of beginning.

Being a lot 100 X 125 out of the Original Lot No. 7, Letha Douglas Subdivision, shown by plat drawn by L.W. Dodds, March, 1926.

Being the same property conveyed to Robert T. Morgan and Barbara Sue Morgan by deed from Amos G. Armout & wife, Alma S. Armour which was dated November 26, 1955 and was filed for record in Book 1210, page 502, Register's Office for Hamilton County, Tennessee.

A copy of the deed of trust is attached hereto and incorporated herein as Exhibit "A".

2. Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase order, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements in support of right to seek a lift of the automatic stay and foreclose if necessary.

3. As a result of a default in the terms of the deed of trust, Movant appointed Wilson & Associates, PLLC as Successor Trustee for the purpose of initiating a foreclosure action against the property.

4. The foreclosure sale was held on July 6, 2015 in Chattanooga, Tennessee. The property was sold to Movant for a credit bid of \$19,621.36. Attached as Exhibit "B" is a copy of the mortgagee's deed.

5. On August 31, 2018, the Debtor herein filed a voluntary bankruptcy petition pursuant to the provisions of the United States Bankruptcy Code which petition remains pending. This petition was filed subsequent to the time of the foreclosure sale. Therefore, the property should not be considered part of the bankruptcy estate as defined by 11 U.S.C. §541.

6. Movant is entitled to relief from the stay afforded by 11 U.S.C. §362(a) to allow it to enforce its rights under the Mortgagee's Deed because the property is not "property of the estate" as defined by 11 U.S.C. §541, since the Debtor no longer held a legal or equitable interest in the property at the time the bankruptcy petition was filed.

7. Therefore, the Court should grant Movant relief from the automatic stay to enable Movant to proceed with its state court remedies against the property in obtaining possession of the property and, if appropriate, to file an unsecured claim in this Chapter 7 proceeding.

8. Movant requests that Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure not apply in this case, thus permitting it to immediately enforce and implement an order granting relief from the automatic stay.

WHEREFORE, Movant prays the Court find that the subject real property is not included in the bankruptcy estate, that it be granted relief from the automatic stay; that it be allowed to proceed with its state court remedies in obtaining possession of the property; for its costs and attorneys' fees herein; and all other just and proper relief.

Respectfully Submitted,
WILSON & ASSOCIATES, P.L.L.C.

/s/ Jodie Thresher

Joel W. Giddens (016700)
Heather Martin-Herron (032248)
Angela Boyd Mathews (033125)
Michael G. Clifford (028691)
Jodie Thresher (025730)

320 North Cedar Bluff Road, Suite 240
Knoxville, Tennessee 37923
(865) 558-5688

Counsel for Movant

CERTIFICATE OF SERVICE

On 9/19/18, copies of the foregoing Motion, Order, and all attachments were served electronically through the electronic case filing system (ECF) or by United States Mail, postage prepaid, upon the creditors in the attached creditor matrix along with the following parties:

Mark T. Young
Attorney at Law
2895 Northpoint Blvd.
Hixson, TN 37343

Barbara Sue Armour Morgan
a/k/a Barbara Sue Morgan
f/k/a Barbara Sue Armour
Debtor
607 South Saint Marks Avenue
Chattanooga, TN 37412

Elisabeth B. Donnovin
Trustee
428 McCallie Avenue
Chattanooga, TN 37402

/s/ Jodie Thresher

Joel W. Giddens (016700)
Heather Martin-Herron (032248)
Angela Boyd Mathews (033125)
Michael G. Clifford (028691)
Jodie Thresher (025730)